**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 588 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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**BHARTIBEN S JANI & 1 - Petitioners**
**Versus**
**REGIONAL TRANSPORT OFFICER & 2 - Respondents**

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**Appearance :**

MS DR KACHHAVAH for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2,
NOTICE SERVED for Respondent(s) : 1, 3,
MR SP HASURKAR for Respondent(s) : 2,

MS MAITHLI MEHTA, AGP for Respondent No.3.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 09/11/2006**

**ORAL JUDGMENT**

1. By way of this petition, under Article 226 of the Constitution of India, the petitioners who

were serving as a part time Water Bearers, have prayed for appropriate direction or order directing the respondents to regularize their services and absorb them as a full time permanent Class – IV employees with salary and other allowances and benefits at par with other full time permanent Class – IV employees of the respondents from the date on which they have completed three years of continues service.

2. The learned Advocate on behalf of the petitioner is absent, though the matter is called out twice today. This matter being the matter of 1996, this Court proceeds further with the present matter and decide the same *ex-parte.*

3. Affidavit-in-reply is filed on behalf of the respondents. It has been submitted that the petitioners were appointed as part time Water Bearers and were paid monthly consolidated salary remuneration of Rs. 75/- and the same was increased from time to time. It is also submitted in reply that in the Motor Vehicles Department, the posts of Water

Bearers were not regular posts and no pay-scales were prescribed for the said posts. It has also been submitted that the petitioners were not falling within the criteria of age limit for the post of Class – IV – Peon. It is also submitted that the Government *vide* Finance Department Circular dated 26.12.1980 instructed all the Heads of the Departments to absorb part time employees on permanent posts within their control in accordance with recruitment rules and procedure, and in view of Government policy of economy in administrative expenditure, the Government vide Finance Department Circular dated 21.08.1995 has kept in abeyance till further orders and the instructions contained in Finance Department Circular dated 26.12.1980. It is therefore, submitted that the petitioners are not entitled to be absorbed as full time Class IV – employees. It is also specifically denied that the petitioners were taken work for full time. It has been submitted that they were required to work only up to six hours per day as per the Government Resolution dated 18.06.1991.

4. On going through the affidavit-in-reply, it appears that the Government Circular dated 26.12.1980 has been kept in abeyance vide Government Circular dated 21.08.1995 and therefore, the prayer of the petitioners to regularize their services cannot be accepted. Nothing is on record to show that the petitioners' appointment were after due procedure and or after their selection, they were appointed as a Part Time Water Bearers. Merely because they had worked for longer time, their services cannot be regularized as held by Hon'ble Supreme Court in catena of decisions. As the appointment of the petitioners were as Part time Water Bearers, their case cannot be considered at par with other full time employees, and therefore, they cannot be paid salary and other benefits which are paid to other full time employees.

5. For the reasons stated above, the petition fails, is required to be dismissed, and is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

[M.R.SHAH, J.]

*satish*